

PUBLIC CHAPTER NO. 831

SENATE BILL NO. 4180

By Kyle, Haynes, Wilder, Marrero

Substituted for: House Bill No. 4158

By Pitts, Odom

AN ACT to amend Tennessee Code Annotated, Title 56, Chapter 2 and Chapter 52, relative to annuities and charitable gift annuities.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 56, Chapter 52, is amended by deleting the chapter in its entirety and by substituting Sections 2 through 12 as appropriately designated sections to Chapter 52:

SECTION 2. This act applies to charitable gift annuities issued by charitable organizations as herein defined and shall be known as the "Tennessee Charitable Gift Annuity Act of 2008". The issuance of a charitable gift annuity by a charitable organization authorized under this act does not constitute engaging in the business of insurance in this state except to the extent otherwise provided in this act. All annuities, including those issued by charitable organizations, that do not meet the requirements of this act shall be subject to regulation as annuities under all applicable chapters of Title 56, except for private annuities issued by a member of a transferor's immediate family.

SECTION 3. (a) As used in this act, unless the context otherwise requires:

(1) "Annuity" means a contract or agreement, both with and without a life or mortality element, to make periodic payments, whether in fixed or variable dollar amounts, or both, at specified intervals;

(2)(A) "Charitable gift annuity" means a transfer of cash, securities, annuities or other property by a donor to a charitable organization in return for an annuity issued by a charitable organization;

(B) "Charitable gift annuity" does not include a charitable remainder trust or a charitable lead trust or other similar arrangement where the charitable organization does not issue an annuity and incur a financial obligation to guarantee annuity payments. "Charitable gift annuity" also does not mean any transfer of cash, securities,

annuities or other property by a donor to a charitable organization in return for an annuity where a commission is paid to any person as a result of such transfer;

(3) "Charitable gift annuity separate account" means any segregated account established by a charitable organization to which such organization allocates cash, securities, annuities or other property transferred by a donor to such organization which are to be applied to the terms of a charitable gift annuity issued in connection with such transfer to fund benefits under such charitable gift annuity;

(4) "Charitable organization" means an entity described by:

(A) Section 501(c)(3) Internal Revenue Code of 1986 (26 U.S.C. Section 501(c)(3)); or

(B) Section 170(c), Internal Revenue Code of 1986 (26 U.S.C. Section 170(c)); and

(5) "Commissioner" means the Commissioner of Commerce and Insurance.

SECTION 4. (a) A charitable organization shall not receive any transfer of property, conditioned upon its agreement to pay an annuity to the donor or other annuitant unless and until it has obtained from the commissioner a certificate of authority to issue charitable gift annuities.

(b) A charitable organization shall file with the commissioner its application for a certificate of authority. The application shall be on a form prescribed and furnished by the commissioner and shall be verified by two (2) of the applicant's officers. The application shall include or be accompanied by such proof as the commissioner may reasonably require that the applicant is qualified under this act. At filing of the application the applicant shall pay to the commissioner the applicable filing fees as specified in Section 56-4-101(1).

(c) If after such investigation or examination as the commissioner deems advisable, the commissioner finds that the applicant is in sound financial condition and is otherwise qualified, the commissioner shall issue to the applicant a certificate of authority. If the commissioner does not so find, the commissioner shall deny issuance of the certificate of authority and notify the applicant in writing stating the reasons.

(d) The certificate of authority of a charitable organization issued under this act shall continue until suspended or revoked by the commissioner or terminated by the organization, subject to continuance each year by payment on or before March 1 of the continuance fee of one hundred dollars (\$100) and filing of the annual report required under Section 7.

(e) A person acting on behalf of a charitable organization to solicit the transfers of property in exchange for annuity payments as authorized under this act shall not be required to be licensed.

(f) The commissioner shall be authorized to exempt from this section any charitable organizations or classes of organizations that the commissioner finds inappropriate to include to effectuate the purposes of this act.

SECTION 5. (a) A charitable organization authorized by this act shall maintain one (1) or more charitable gift annuity separate accounts for its charitable gift annuities. The assets allocated to any such separate account shall not be used to satisfy any debts of the charitable organization other than those incurred pursuant to the issuance of charitable gift annuities to which such account applies. The assets of such separate account shall at least equal either:

(1) The total amount of donations for outstanding charitable gift annuities to which such account applies; or

(2) One hundred ten percent (110%) of the reserves, calculated in a manner consistent with subsection (b) for charitable gift annuities to which such separate account applies.

(b)(1) Reserves on the outstanding charitable gift annuities shall not be less than reserves calculated using:

(A) The commissioner's annuity reserve valuation method as defined in the charitable organization's domestic state standard valuation law;

(B) Any mortality table permitted under the charitable organization's domestic state standard valuation law to be used in determining the minimum standard for the valuation of individual annuities issued during the same calendar year as the charitable gift annuity; and

(C) The maximum interest rate permitted under the charitable organization's domestic state standard valuation law to be used in determining the minimum standard for the valuation of individual annuities issued during the same calendar year as the charitable gift annuity.

(2) In determining the reserves, a deduction shall be made for any portion of the charitable gift annuity risk that is insured or reinsured by the charitable organization with an authorized insurer or reinsurer. For this purpose, any annuity contract purchased from an authorized insurer or reinsurer by the charitable organization is considered to be "annuity risk reinsured".

(c) The general assets of the charitable organization shall be liable for charitable gift annuity agreements to the extent that assets allocated to the charitable gift annuity separate accounts are inadequate.

SECTION 6. The segregated assets held in the charitable gift annuity separate account shall be invested in accordance with the prudent investor standard as set forth in the Tennessee Uniform Prudent Investor Act of 2002, Tennessee Code Annotated, Title 35, Chapter 14, Part 1.

SECTION 7. (a) A charitable organization authorized under this act shall annually file a report verified by at least two (2) principal officers with the commissioner covering the preceding fiscal year. The report is due ninety (90) days after the close of the charity's fiscal year or at a later date approved by the commissioner. In lieu of a verified report, a charitable organization may submit an audited report within one hundred and fifty (150) days after the close of the charity's fiscal year.

(b) The report shall be in a form prescribed by the commissioner and shall include:

(1) A financial statement of the organization, including its balance sheet and receipts and disbursements for the preceding year;

(2) Any material changes in the information;

(3) The number of gift annuity contracts issued during the year, the number of gift annuity contracts as of the end of the year and the number of gift annuity contracts that terminated during the year;

(4) The amount of annuity payments made during the year and the amounts transferred from the charitable gift annuity separate account to the general account during the year; and

(5) Other information relating to the performance of the charitable gift annuities and charitable gift annuity separate account of the charitable organization necessary to enable the commissioner to:

(A) Issue certificates of authority;

(B) Ascertain maintenance of records;

(C) Evaluate solvency;

(D) Respond to consumer complaints; and

(E) Conduct hearings to determine compliance with this act.

(c) A copy of a report, containing the information required under subsection (b), that has been filed in the state of domicile of the charitable organization, or in any other state in which the charitable organization must file a report containing substantially the same information required by this act will be deemed to satisfy the requirements of this section. The commissioner shall have the authority to request additional information.

SECTION 8. Whenever the commissioner determines it to be proper or expedient, the commissioner may make or cause to be made an examination of the assets and liabilities and other affairs of the charitable organization as they pertain to charitable gift annuity agreements entered into pursuant to this act. In determining a charitable organization's ability to pay its obligations under charitable gift annuities, the commissioner may limit such examinations to the charitable gift annuity separate account unless the commissioner determines that such assets in the charitable gift annuity account are not adequate for such purpose. The authority of the commissioner under this section shall be the same as that bestowed upon the commissioner under §§ 56-1-411 and 56-8-107. The commissioner shall keep the information obtained in the course of examinations confidential until the examination is completed. The reasonable expenses incurred for an examination shall be paid by the charitable organization.

SECTION 9. (a) No form of a charitable gift annuity shall be issued in this state without the approval of the commissioner. The commissioner shall, within thirty (30) days of the filing of a charitable gift annuity, approve or disapprove the proposed agreement forms and shall notify the charitable organization as soon as practicable. If the commissioner does not disapprove the proposed agreement forms within the aforementioned thirty (30) day period, the forms shall be deemed approved.

(b) Each annuity agreement form shall include the following information:

- (1) The value of the property to be transferred;
- (2) The amount of the annuity to be paid to the donor or other annuitant;
- (3) The manner in which and the intervals at which payment is to be made;
- (4) The age and sex of the person or persons during whose life payment is to be made;
- (5) The reasonable value as of the date of the agreement of the benefits created as calculated using methodology approved by the Internal Revenue Service; and
- (6) The date the payments are to begin.

SECTION 10. (a) Within a reasonable amount of time after accepting the property transferred in exchange for the annuity agreement, the

organization shall obtain a signed statement from a donor acknowledging the following terms of the agreement:

- (1) The expected value of the property to be transferred;
- (2) The amount of the annuity to be paid to the donor or other annuitant;
- (3) The manner in which and the intervals at which payment is to be made;
- (4) The age of the person or persons during whose life payment is to be made;
- (5) The reasonable value as of the date of the agreement of the benefits created; and
- (6) The date the payments are to begin.

(b) In addition to the above disclosure, the charitable organization shall obtain a signed statement from a donor acknowledging that the donor has been informed that payments made under a charitable gift annuity are backed solely by the full faith and credit of the organization, are not insured or guaranteed by an insurance company, are not protected by any insurance guaranty association and are not backed in any way by the State of Tennessee.

(c) The requirements of subsections (a) and (b) may be satisfied by an acknowledgement that is a part of the annuity agreement that is signed by the donor.

(d) A donor may revoke any donation under this act prior to signing the written acknowledgement required in subsections (a) and (b).

SECTION 11. (a) The provisions of Title 56, Chapter 8, shall apply to charitable gift annuities issued under this act.

(b) Except as otherwise herein provided, the provisions of Title 56, including, without limitation, Chapters 3, 9, and 12, shall not apply to charitable gift annuities issued under this act.

SECTION 12. The commissioner may, after notice and hearing, promulgate reasonable rules, regulations and orders as are necessary or proper to carry out and effectuate the provisions of this act, including, but not limited to, the standards for determining financial soundness and other qualifications of a charitable organization wishing to issue charitable gift annuities in this state. Such regulations shall be subject to review in accordance with the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5.

SECTION 13. If any provision of this act or the application of the provision to any circumstances is held invalid, the remainder of this act or the application of the provision to other circumstances shall not be affected.

SECTION 14. Tennessee Code Annotated, Section 56-2-201(4), is amended by adding after the language "annuities" the language ", both with and without a life or mortality contingency or element,".

SECTION 15. For the purpose of promulgating rules and regulations, this act shall take effect upon becoming law. For all other purposes, this act shall take effect January 1, 2009, the public welfare requiring it, and shall apply to charitable gift annuities entered into on or after January 1, 2009.

PASSED: April 17, 2008



RON RAMSEY
SPEAKER OF THE SENATE



JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 30th day of April 2008



PHIL BREDESEN, GOVERNOR